

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 109

CITY OF YONKERS AND JOHN W. TOOLEY, JR., AS
PRESIDENT OF COMMITTEE OF YONKERS COMMUTERS, ETC.,

Appellants,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE
COMMERCE COMMISSION AND THE NEW YORK
CENTRAL RAILROAD COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

MEMORANDUM OF THE NEW YORK CENTRAL
RAILROAD COMPANY IN SUPPORT OF MOTION
TO AFFIRM.

THOMAS P. HEALY,

HAROLD H. McLEAN,

*Counsel for The New York Central
Railroad Company, Appellee.*

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 109

PUBLIC SERVICE COMMISSION OF THE STATE
OF NEW YORK (STATE DIVISION, DEPARTMENT OF
PUBLIC SERVICE), CITY OF YONKERS, AND JOHN W.
TOOLEY, JR., AS THE CHAIRMAN AND PRESIDING OFFICER
OF COMMITTEE OF YONKERS COMMUTERS, A VOLUNTARY
UNINCORPORATED ASSOCIATION COMPOSED OF MORE THAN
SEVEN MEMBERS,

Plaintiffs-Appellants,

against

UNITED STATES OF AMERICA AND THE NEW YORK
CENTRAL RAILROAD COMPANY,

Defendants-Appellees.

**MEMORANDUM OF THE NEW YORK CENTRAL
RAILROAD COMPANY IN SUPPORT OF MOTION
TO AFFIRM.**

The New York Central Railroad Company joins in the motion to affirm filed by the United States of America and the Interstate Commerce Commission under Rule XII. The facts of the case and the applicable law will be dealt with in the papers filed on behalf of the United States of America and the Interstate Commerce Commission. This

memorandum will be devoted to a statement of matters of record tending to show that the line sought to be abandoned is not a suburban or interurban electric railway within the intendment of Paragraph 22 of Section 1 of the Interstate Commerce Act, and, in any event, is operated as a part of a general steam railroad system of transportation.

It appears from the record that:

1. The New York Central Railroad Company is a steam railroad system of transportation.

2. The Board of Directors of The New York Central Railroad Company in the resolution of April 22, 1942, authorizing the institution of the proceeding (Ex. A of bill of complaint, p. 5) describes the line to be abandoned as

* * * that portion of the Putnam Division of the New York Central Railroad, known as the Yonkers Branch, extending from the main line of the Putnam Division at Van Cortlandt Park Junction, New York City, to Getty Square, Yonkers, N. Y., a distance of 3.1 miles. * * *

3. The Return to Questionnaire shows on page 2 thereof (Ex. A of bill of complaint) that from February 1, 1894, to March 7, 1913, the line was operated by The New York Central and Hudson River Railroad Company, and that on the latter date the lessor company, The New York and Putnam Railroad Company, was merged with The New York Central and Hudson River Railroad Company which Company was, in turn, merged with The New York Central Railroad Company in 1914, and further that:

* * The line proposed to be abandoned has been operated as a part of the Putnam Division of the applicant since applicant's formation in 1914. * *

4. The answer to question 11 of the Return to Questionnaire (pages 5 and 6) sets forth that Yonkers Branch trains operate over rails of the Putnam Division to Sedgwick Avenue and that there are transfer arrangements with Hudson Division trains operating to and from Grand Central Terminal and other stations.

5. Schedules of certain Hudson Division trains are adjusted to accommodate patrons of trains on the branch sought to be abandoned (Record before the Interstate Commerce Commission, p. 121).

6. The answer to question 14 of the Return to Questionnaire (page 11) shows a net annual system loss of \$71,932 on account of the branch, a loss borne by The New York Central Railroad Company.

7. The answer to question 15 of the Return to Questionnaire (page 11) shows that the line was electrified in 1926, which was after the effective date (February 28, 1920) of that portion of the Interstate Commerce Act involved herein. There is no indication here or throughout that the electrification made any change in the long established relationship of the branch to the New York Central System.

8. Tickets sold to and from stations on the Branch have optional privileges permitting use of the tickets at nearby stations on other New York Central lines (Exhibit 6 before the Interstate Commerce Commission).

9. The multiple unit electric cars used on the Branch are of the same type as other cars used in the metropolitan area and are needed to render service on other lines (Record before the Interstate Commerce Commission, p. 99).

10. The train crews used on the Branch are out of a common pool also serving the steam operated Putnam Division, many employees performing, during one trick of duty, service on both lines (Record before the Interstate Commerce Commission, p. 110).

Respectfully submitted,

THOMAS P. HEALY,

HAROLD H. McLENN,

Attorneys for Appellee.

The New York Central Railroad Company.

June 17, 1943.

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